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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,929	02/26/2004	Kenneth Kutner	28,460-A	4894

7590  
Charles E. Temko  
22 Marion Road  
Westport, CT 06880

01/11/2005

EXAMINER
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DURAND, PAUL R

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/786,929	<b>Applicant(s)</b> KUTNER, KENNETH	
	<b>Examiner</b> Paul Durand	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Akoh et al (US 4,089,255).

In regard to claim 1, Akoh discloses the invention as claimed including filling station 52, a stack of collapsible containers 22, plastic bag liners 48, placing the liner in the container, filling the container with material from station 52 and closing the container (see Fig. 1 and C3,L21 – C4,L30).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Akoh in view of Kupersmit (US 5,090,614).

Akoh discloses the invention substantially as claimed including the use of a conveyor 34 to move packages down a manufacturing line. What Akoh does not

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disclose is the use of a slip sheet. However, Kupersmit teaches that it is old and well known in the art of packages to have an integrated slip sheet 52 for the purpose of moving a box (see Fig.1 and C3,L47-51). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Akoh with the slip sheet as taught by Kupersmit for the purpose of moving a box.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Akoh in view of Henle et al (US 4,287,703).

Akoh discloses the invention substantially as claimed including closing the end of bag liner after it has been filled. What Akoh does not disclose is the sealing of the bag by heat. However, Henle teaches that it is old and well known in the art of packages to use heat sealing at seal station 22 to close bags after they have been filled for the purpose of reducing contamination and spillage (see Fig.1 and C7,L29-35). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Akoh with the sealing means as taught by Henle for the purpose of reducing contamination and spillage.

### ***Response to Arguments***

6. Applicant's arguments filed 12/2/2004 have been fully considered but they are not persuasive.

Applicant first argues regarding claim 1 that the primary reference of Akoh does not disclose the serial conveyance of containers. The examiner disagrees. In figure 1,

Akoh clearly show the container being conveyed serially (i.e. in series to a bag insertion station and then to a filling station. The examiner asserts that given the broadest reasonable interpretation of the phrase "serially", it falls within the teaching of Akoh.

Applicant further argues regarding claim 1 that applicant's invention is concerned with stacking a small supply of containers and that they are erected beneath the hopper. The examiner disagrees with this argument and asserts that applicant is relying on limitations in his invention not stated in the claim. The use of Akoh as the basis for a § 102 rejection is that Akoh teaches every element of the claim in the applicant's invention (see MPEP § 2131). Limitations such as the size or weight of the container are not considered in the rejection because they do not appear in the claims, and any such consideration would require further consideration to determine patentability.

In regard to claims 2, Applicant argues that there is not motivation to combine the references of Akoh and Kupersmit. The examiner disagrees and recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the primary teaching of Kupersmit was chosen to show applicant that the use of a slip sheet is well known as an alternative to moving a container through a filling and sealing process.

In regard to claim 3, applicant argues that the combined reference of Akoh and Henle do not teach the applicant's invention since the sealing process does not function in the manner as disclosed by applicant. The examiner disagrees with this argument and asserts that applicant is relying on limitations that are not recited in the claim and asserts that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Therefore, for the reasons indicated above, the rejection is deemed proper.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand  
January 7, 2005



**EUGENE KIM  
PRIMARY EXAMINER**